



**FAIR POLITICAL PRACTICES COMMISSION**

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

**To:** Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda

**From:** Zackery P. Morazzini, General Counsel

**Subject:** Monthly Report on Legal Division Activities

**Date:** February 27, 2012

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**A. OUTREACH AND TRAINING**

**U.S. Department of State/Institute for International Education – San Francisco, CA:** In February, I gave a presentation on American state and local ethics and anti-political corruption laws to a group of foreign dignitaries representing nineteen countries, including Egypt, Iraq, Israel, Turkey, and the United Arab Emirates. Brought together by the U.S. Department of State, this group spent three weeks touring the United States learning about American Democracy. The State Department noted that the California FPPC is a nationally renowned ethics agency, and they were grateful we were able to speak to the group.

**Gift Regs Adoption, Amendment, Repeal:** At the November and December Commission meetings the Commission adopted 27 amendments to regulations and new regulations interpreting the gift rules of the Act. Since then, Legal Division staff has spent a considerable amount of time on education and outreach. In addition to advising on the application of the revised regulations, staff has updated the gift fact sheets and provided a list of regulatory changes for the public, all available on the Commission website. In addition, Bill Lenkeit has made numerous public appearances in order to further educate the public on the new rules.

**Interested Persons Meetings:** Since the December meeting staff has conducted four Interested Persons Meetings to solicit public input on planned 2012 regulatory projects.

- **Proposal Regarding Application of the Act's Conflict of Interest Provisions To California Charter Schools**
- **Proposed regulations to clarify the reporting obligations of committees formed to support or oppose a LAFCO proposal and to harmonize provisions of the Political Reform Act with provisions of the Cortese-Knox-Herzberg Local Government Reorganization Act.**
- **Proposal to Amend the Conflict of Interest Regulations:** Staff solicited public input relating to improvements to the conflict of interest regulations (See Regulations 18700 - 18709).
- **Behested Payment Reporting:** Staff held an interested persons meeting to solicit general public comment and suggestions on a proposed regulation related to behested payments.

## **B. REGULATIONS**

Over the course of 2011, the Legal Division presented and the Commission took action on over 40 regulations. The changes ranged from minor changes to entirely new regulations. The affected provisions are:

- 18116 Reports and Statements; Filing Dates
- 18237 Definition of Investment
- 18239 Definition of Lobbyist
- 18316.6 Treasurer Liability
- 18360 Complaints
- 18361 Delegation by the Executive Director Pertaining to Enforcement Proceedings and Authority to Hear Probable Cause Proceedings
- 18361.4 Probable Cause Proceedings
- 18361.11 Default Proceedings
- 18401.1 Required Recordkeeping for Slate Mailer Organizations
- 18421.31 Text Message Contributions
- 18435 Definition of Mass Mailing and Sender
- 18435.5 Slate Mailer Requirements
- 18450.4 Contents of Disclosure Statements. Advertisement Disclosure
- 18451 CalPERS and CalSTRS Board Member Elections; Where to File Campaign Reports and Statements

- 18452 Reporting Requirements
- 18453 CalPERS Board Member Elections - Record Keeping Requirements
- 18940 Guide to Gift Regulations
- 18940.1 General Definition
- 18940.2 Gift Limit Amount
- 18941 Receipt, Promise, Acceptance and Return of a Gift
- 18941.1 Payments for Food. [Repealed]18942 Exceptions to Gift and Exceptions to Gift Limits
- 18942.1 Definition of Informational Material
- 18942.2 Definition of Home Hospitality
- 18942.3 Definition of Ceremonial Role
- 18943 Gift to Official Through Family Member
- 18944 Gifts to an Agency
- 18944.1 Gifts -- Agency Provided Tickets or Passes
- 18944.2 Agency Raffles and Exchanges of Presents
- 18944.3 Gifts from a Government Agency to Officials in that Agency
- 18945 Source of Gifts
- 18945.1 Aggregation of Gifts -- Single Source
- 18945.2 Group Gifts
- 18945.3 Intermediary of a Gift. [Repealed]
- 18946 Valuation of Gifts
- 18946.1 Exception -- Valuation of Gifts -- Passes and Tickets
- 18946.2 Exception -- Valuation of Gifts -- Attendance at Invitation-Only Events
- 18946.3 Exception -- Valuation of Gifts -- Wedding Gifts
- 18946.4 Exception -- Valuation of Gifts -- Attendance at Nonprofit or Political Organization Fundraising Events
- 18946.5 Exception -- Valuation of Gifts -- Air Transportation

### **C. UPDATE ON PUBLIC RECORD ACT REQUESTS AND ADVICE LETTERS**

Between November 14, 2011 and February 27, 2012, the Legal Division received 32 CPRA requests and responded to 24. During the same period we received 65 advice letter requests and issued 73 advice letters. During 2011, we received 245 letters and 159 CPRA requests.

**Advice Letter Summaries from November 14, 2011 to February 27, 2012****Campaign****Michael R.W. Houston****I-11-176**

In light of the alleged misappropriation of campaign funds by the committee's treasurer, the Act does not preclude a non-candidate controlled committee from opening a second bank account, so that it can continue to operate and accept contributions and make expenditures. Nonetheless, the committee must continue to adhere to all provisions of the Act and Commission regulations, and the committee's subsequent treasurer must take all reasonable steps necessary to disclose campaign activity based on the information available or that becomes available.

**Stephen J. Kaufman****I-11-213**

In light of the alleged misappropriation of campaign funds by the committee's treasurer, a candidate's committee for elective office unable to meet the criteria for termination provided in Regulation 18404(b) may send a written request for termination to the Commission providing certain conditions have or will be met. More generally, we can only advise that the candidate, and the committee's subsequent treasurer must continue to take all reasonable steps necessary to disclose campaign activity based on the information available or that becomes available. Finally, because the committee's bank account is inaccessible, a second bank account is permissible under certain conditions notwithstanding the one-bank account rule.

**Barry A. Bostrom****A-11-217**

Under the Act, ActRight Fund, an I.R.C. Section 527 political organization, may sponsor and register a political committee, ActRight California, to act as an online clearinghouse for conservative action, accepting contributions from individuals for California candidates. ActRight California may group the contributions raised on its website for each candidate, as designated by the donors and distribute these contributions to each candidate. Contributions must be reported as from the original contributor who donated via the ActRight website, with ActRight California reported as an intermediary.

**Heidi K. Abegg****A-11-218**

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**Donald J. Krouse****I-11-220**

A local political club chartered by the San Bernardino Democratic Central Committee that has accepted payments totaling \$1,000 or more in a calendar year for partisan voter registration and get-out-the vote activities qualifies as committee pursuant to Section 82013(a).

**Marguerite Lawry****I-11-240**

The Act does not restrict a citizen from participating in the democratic process as a private citizen. Citizens who are members of an ad-hoc commission with the city council may not campaign for or against a ballot measure using public agency funds, and if they spend or receive \$1,000 or more in a calendar year, they may become a committee.

**Edward Riffle****A-11-245**

A local campaign ordinance conflicts with state law if it requires a reporting above and beyond what the FPPC requires unless it applies only to the candidates seeking election in that jurisdiction

**Conflict of Interest****R. Morgan Gilhuly****A-11-194**

The conflict-of-interest provisions of the Act do not bar a member of the California State Board of Optometry from participating in board decisions involving an Assembly bill that is opposed by a corporation that employs him as a consultant. The Act does not prohibit him from participating in decisions involving litigation between a subsidiary of the corporation and the state. These decisions will not have a reasonably foreseeable material financial effect on the corporation.

**J. Christine Dietrick****A-11-200**

A city planning commissioner has a disqualifying conflict of interest in a decision to select a fire hazard map identifying areas that would be subject to more stringent construction standards, where the commissioner owns real property designated in one of two alternative maps being considered.

**Bruce Gibson****A-11-202**

County supervisor may participate in County hearings regarding proposals to amend a Vacation Rental Ordinance so long as his interest in real property is not foreseeably and materially affected by the decision, or more than 5,000 properties will be affected in substantially the same manner as the supervisor's property.

**Roy A. Hanley****I-11-204**

Even if a city councilmember has a conflict of interest that prevents him or her from participating in a governmental decision, the Act does not prevent a councilmember from addressing the council in an individual capacity on behalf of his personal interests.

**James R. Sutton****I-11-207**

A member of the board of supervisors has a 50% interest in settlement payments made to his wife for work she performed. The income is reported on the official's statement of economic interest. Additionally, even when the source of income (corporation paying the wife) may appear before the board of supervisors, the corporation has no obligations under the Act to report payments.

**Louis B. Green****A-11-209**

An official who owns real property whose development and income producing potential would likely be affected by proposed amendments to the County's General Plan and the zoning ordinance may not participate in the decisions because the governmental decisions will have a reasonably foreseeable material financial effect on his real property interests.

**Bruce C. Cline****A-11-212**

An official is prohibited from participating in any decision involving a development project that will have a material financial effect on this source of income, a non-profit entity. However, the Act does not prohibit the official from discussing the project generally with members of the press or the public, provided that these individuals are: (1) not members, officers, employees, or consultants of the city and (2) he does not ask them to discuss his concerns about the project with members, officers, employees or consultants of the city.

**David M. Fleishman****A-11-215**

A city council member is not prohibited from voting to approve a development agreement where a portion of the developer fees will be used to fund rehabilitation of the city hall building and the council member owns real property within 500 feet of the city hall property. The decision will not have a reasonably foreseeable material financial effect on the council member's real property

**David M. Fleishman****A-11-221**

Real property owned by a city council member that is within 500 feet of a plan area that is the subject of a general plan amendment is directly involved in decisions to amend the general plan. The exception to the general rule that real property within 500 feet is directly involved is not applicable. One of the necessary factors for the exception to apply is not met: the decision cannot concern an identifiable parcel or parcels.

**Greg Gillott****A-11-222**

Governmental salary is not a cognizable interest under the Act. When the only listed economic interest is governmental salary, the official has no conflict of interest that would prevent him from participating in governmental decisions.

**Daniel J. McHugh****I-11-223**

Official's economic interest in his residence, within 500 feet of the city's sports park, is directly involved in decisions related to the park including both the park's budget and the city's lease-leaseback agreement. The financial effect of the decisions on this economic interest is presumed to be material. Accordingly, the official may not take part in the decisions unless he can (1) rebut the presumption of materiality by showing that it is not reasonably foreseeable the decisions will have *any* financial effect on his residence and (2) determine that there will be *no* reasonably foreseeable material financial effects on any other economic interest he may have.

**John Pinkney****A-11-227**

In a decision where selling the city's hospital will have a reasonably foreseeable material financial effect on a public official's economic interest in her spouse's income, the official is deemed to have a conflict of interest and is prohibited from participating in that decision.

**Robert W. Hargreaves****I-11-233**

Even assuming that the elected city official solicited a payment from one company to another company to conduct a community survey relating to a campaign issue, neither the Act's conflict-of-interest provisions nor Section 84308 prohibit the official from taking part in a decision regarding the company from which the payment was solicited when the payment occurred more than 12 months prior to the decision.

**Louis D. Van Mullem, Jr.****I-11-235**

To the extent that an environmental company's involvement in any particular decision before an air pollution control district regarding a United States Air Force Base is limited to the consultation services provided to the Air Force, a member of the district with an economic interest in the company may take part in the decision so long as the reasonable foreseeable financial effect on the business is less than the applicable materiality standard under Regulation 18705.3(c)(1).

**James W. Wieboldt****A-11-237**

A member of a city's Community Parking Commission is not prohibited from also serving on a Business Improvement District Formation Committee. The Act's conflict-of-interest rules prohibit a public official's participation in a governmental decision that would have a reasonably foreseeable, material financial effect on one or more of the official's economic interests. Membership in two or more government agencies does not in itself violate the Act.

**Lynn R. McRea****A-11-238**

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**Michael DeArton****I-11-239**

The Act's conflict-of-interest provisions do not prohibit a public official from serving on a healthcare district board of directors while financially supporting a private medical practice including the donation of office space to the practice. However, the official is prohibited from making, participating in making, or using his official position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect on any economic interests he may have.

**Albert Robles****A-11-244**

A school board member may also work as a consultant to a private company seeking to get business with other school districts because the official will not be making, participating in making, or influencing any governmental decision before her own agency. Therefore, she will not have a conflict of interest under the Act.

**Felix H. Bachofner****I-12-014**

Official's economic interest in rental property appears to be directly involved in decisions regarding the development plan and a proposed library. Thus, the financial effect of governmental decisions on this economic interest is presumed to be material. The official may not make, participate in making, or use official position to influence the making of these decisions unless the official can (1) rebut the presumption of materiality by showing that it is not reasonably foreseeable the decisions will have *any* financial effect on the rental property and (2) determine that there will be *no* reasonably foreseeable material financial effect on any other economic interest the official may have including, but not limited to, his economic interests in his rental business and tenants of his rental business.

**Honoraria****Jason S. Campbell****I-11-195**

Nothing in the Act prohibits an official from participating in a fundraising event where a nonprofit organization will auction off a lunch with the official. However, a free meal received by the official will be considered a gift and will be reportable if it results in \$50 or more in gifts from a single source.

**Lobbying****Laura Adams****A-12-016**

Section 85702 does not prohibit an owner of a lobbying firm who is not a registered lobbyist to manage and direct the activities of a PAC for its client.



**Miscellaneous****Vicki Hightower****I-11-211**

General review of a training for local officials under Assembly Bill 1234.

**Kenneth Moser****G-11-231**

General discussion of civil prosecution under Section 91004 which requires that a person bringing a civil action against an official for misconduct must reside in the jurisdiction in which the alleged misconduct occurred.

**Revolving Door****Mark Stephenson****A-11-197**

Generally, appearances or communications, made as part of “services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement” are not prohibited by the one-year ban. However, if new duties involve influencing any judicial, quasi-judicial, or other proceeding in which the official participated, the permanent ban would apply.

**Lori J. Barker****A-11-241**

The one-year ban only restricts the requestor’s activities to the extent that he is making an appearance or communication for the purpose of influencing a legislative or administrative action, or an action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Appearances or communications made as part of “services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement” are not prohibited. The permanent ban would not apply so long as the requestor’s new duties do not involve influencing any judicial, quasi-judicial, or other proceeding in which he participated.

**Brian T. Hildreth****A-11-203**

The post-governmental employment provisions of the Act prohibit an official who will be acting as a paid consultant for a regional rail commission from appearing before or communicating with his former agency regarding projects that he was involved with while employed by the state. The official is prohibited by the one year ban from making certain appearances before his former agency and by the permanent ban from representing the regional rail commission on any proceeding in which he participated while working for the state.

**George W. Williams****I-11-208**

To the extent that the official left office more the 12 months prior to the governmental decision in question, questions regarding the post-employment provisions of the Act applicable to a local official are now moot.

**Edward G. Heidig**

**A-11-230**

Post-governmental employment restrictions only apply when a former agency employee appears, for compensation in front of an agency for which the employee used to work and agencies under its budgetary control. When an employee appears before another , unrelated, state agency, the restrictions do not apply.

**Peter Siegenthaler**

**A-11-236**

A former designated employee of the Department of Transportation is not prohibited under the one-year ban from working as a consultant providing engineering consulting services for his former employer involving the administration of (i) contracts within any of the department's 12 districts, or (ii) a contract within a district where he worked on the contract as an employee of the department. He will not be providing services for the purpose of influencing administrative or legislative action. However, he is permanently barred from providing consulting services that would include participation in proceedings or determinations in judicial, quasi-judicial or other proceedings if he previously participated in those proceedings as a state employee.